

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING THE FOLLOWING CHAPTER 162, REGISTERED SEX OFFENDER RESTRICTIONS:

Chapter 162 Registered Sex Offender Restrictions

§ 162-1 Findings and Intent

- A. It is the intent of this ordinance to serve and to protect the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children, the elderly and the mentally retarded regularly congregate in concentrated numbers wherein certain registered sex offenders are prohibited from loitering and establishing temporary or permanent residence.
- B. After careful consideration, the City finds that this legislation is the most narrowly tailored means of limiting, to the fullest extent possible, the opportunity for registered sex offenders to approach or otherwise come in contact with children, the elderly and the mentally retarded in places where children, the elderly or the and the mentally retarded would naturally congregate, and that the protection of the health and safety of our children, elderly and the mentally retarded is a compelling governmental interest.
- C. By the enactment of this or any other legislation, the City understands that it cannot remove the threat posed to or guarantee the safety of children, the elderly and the mentally retarded, or assure the public that registered sex offenders will comply with the mandates of this statute. This legislation is intended to create a civil, non-punitive regulatory scheme in order to protect children, the elderly and the mentally retarded to the extent possible under the circumstances and not as a punitive measure of any kind.
- D. Registered sex offenders pose a clear threat to the children, the elderly and the mentally retarded residing or visiting in the community. Because registered sex offenders are more likely than any other type of offender to re-offend for another sexual offense, the City desires to impose safety precautions in furtherance of the goal of protecting the children, the elderly and the mentally retarded. The purpose of this regulation is to reduce the potential risk of harm to children, the elderly and the mentally retarded of the

community by impacting the ability for registered sex offenders to be in contact with unsuspecting children, the elderly and the mentally retarded in locations that are primarily designed for use by, or are primarily used by children, the elderly and/or and the mentally retarded, namely, the grounds of a public or private school for children, a center or facility that provides day care or children's services, a park, other public recreational facility, elderly housing facilities or facilities for the mentally retarded. The City desires to add location restrictions to such offenders where the state law is silent.

§ 162-2 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Registered Sex Offender" for the purposes of this Chapter shall mean: (a) any person who is designated as a sexually violent predator pursuant to Chapter 6, § 178C of the Massachusetts General Laws and who is required to register as a sex offender pursuant to the guidelines of the Sex Offender Registry Board; (b) any person who is required to register as a Sex Offender pursuant to Chapter 6, § 178C of the Massachusetts General Laws and who is finally classified as a Level 3 offender pursuant to the guidelines of the Sex Offender Registry; and (c) any person who is required to register as a Sex Offender pursuant to Chapter 6, § 178C of the Massachusetts General Laws, who is finally classified as a Level 2 offender pursuant to the guidelines of the Sex Offender Registry, and who has committed a Sex Offense against a Child, an Elder and/or a Mentally Retarded Person.

"Sex offender" and **"Sex offense"** shall have the same meaning as provided for in MGL Chapter 6, § 178C.

"Child" or **"Children"** shall mean persons under eighteen (18) years of age.

"Elder" or **"Elderly"** shall mean persons over sixty (60) years of age.

"Mentally Retarded Person" shall mean, pursuant to MGL c. 123B, § 1, a person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the Department of Mental Retardation, is substantially limited in his or her ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community.

“School” - Any public or private educational facility that provides educational instruction to Children in grades pre-K through 12.

“School Bus Stop” - Any area designated by the public school district or by a private or parochial school within the City of Marlborough as a school bus stop.

“Day Care Center” - Any establishment, whether public, private or parochial, which provides care for Children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Office of Child Care Services.

“Park” includes active and passive public land designated for recreational or athletic use by the City of Marlborough, the Commonwealth of Massachusetts or other governmental subdivision, and located within the City of Marlborough.

“Recreational facility” includes, but is not limited to, a playground, a forest preserve, conservation area, jogging trail or running track, hiking trail, beach, water Park, wading pool, soccer field, baseball field, football field, basketball court or hockey rink, mini-golf business, video arcade, laser tag establishment, Boys and Girls Club(s), skate park, dance or gymnastic studio, movie theater, martial arts school or family-oriented pool hall, whether publicly or privately owned, to which the public has a right of access as an invitee and which is located within the City of Marlborough.

“Elderly housing facility” includes any building which provides a group residence for the Elderly and is located within the City of Marlborough.

“Facility for the Mentally Retarded” includes facilities under the jurisdiction of the Department of Mental Retardation, and which is located within the City of Marlborough.

“Permanent Residence” - A place where a person lives, abides, lodges, or resides for 14 or more consecutive days.

“Temporary Residence” - A place where a person lives, abides, lodges, or resides for a period of less than 14 consecutive days or 14 days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person's Permanent Residence; but “Temporary Residence” shall not include residence at a hospital or other healthcare or medical facility for less than 14 consecutive days or 14 days in the aggregate during any calendar year.

“Establishing a Residence” – To set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or by means of purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).

§ 162-3 Residency Restrictions

- A. *Prohibition.* A Registered Sex Offender is prohibited from establishing a Permanent Residence or Temporary Residence within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded.
- B. *Evidentiary matters; measurements.* For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the outer property line of the Permanent or Temporary Residence to the nearest outer property line of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded.
- C. *Exceptions.* A Registered Sex Offender residing within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded does not commit a violation of this section if any of the following apply:
 - 1. The Registered Sex Offender established the Permanent Residence prior to the effective date of this ordinance, and
 - a. Permanent Residence was established by purchasing the real property where the residence is established, as long as the Registered Sex Offender continues to reside in, and does not move to another restricted location in Marlborough different from, the Permanent Residence established prior to the effective date of this ordinance, or

- b. Permanent Residence was established through a valid, fixed-term, written lease or rental agreement, executed prior to the effective date of this ordinance, as long as the Registered Sex Offender continues to reside within, and does not move to another restricted location in Marlborough different from, the Permanent Residence established prior to the effective date of this ordinance, or
 - c. Permanent Residence was established through a verbal lease or rental agreement at the will of the landlord, as long as the Registered Sex Offender continues to reside within, and does not move to another restricted location in Marlborough different from, the Permanent Residence established prior to the effective date of this ordinance.
- 2. The Registered Sex Offender is a minor living with his or her parent(s) or legal guardian(s), which parent(s) or legal guardian(s) has (have) established a Permanent Residence pursuant to § 162-3.C.1.
 - 3. The School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded within one thousand (1,000) feet of the Registered Sex Offender's Permanent Residence was opened after the Registered Sex Offender established the Permanent Residence.

D. *Forfeiture of exception.* If, either after the effective date of this ordinance or after a new School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded opens, a complaint or an indictment is issued by a court against a Registered Sex Offender otherwise enjoying an exception under this subsection C, that such Sex Offender has committed another Sex Offense, he/she will immediately forfeit that exception and be required to comply with this section.

E. *Notice to move.* A Registered Sex Offender who resides on a permanent or temporary basis within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the Registered Sex Offender's noncompliance with this chapter, move from said location to a new location, but said location may not be within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded. It shall constitute a separate violation for

each day beyond the thirty (30) days the Registered Sex Offender continues to reside within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded. Furthermore, it shall be a violation each day that a Registered Sex Offender shall move from one location in the City to another that is within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded.

F. Penalties.

Any violation of this section shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, as follows:

1. First Offense by Registered Sex Offender: Non-criminal fine of \$150.00 and notification to offender that he/she has thirty (30) days to move.
2. Subsequent Offense by Registered Sex Offender: Non-criminal fine of \$300.00 and notification to offender's parole officer and/or probation officer, and the Commonwealth's Sex Offender Registry Board, that the Sex Offender has violated a municipal ordinance.

§ 162-4 Safety Zones

A. Prohibitions.

1. A Registered Sex Offender is prohibited from entering upon the premises of a School or Day Care Center unless previously authorized specifically in writing by the School administration or Day Care Center owner.
2. A Registered Sex Offender is prohibited from entering upon the premises of an Elderly Housing Facility or Facility for the Mentally Retarded unless previously authorized in writing by the on-site manager of the Elderly Housing Facility or Facility for the Mentally Retarded.
3. A Registered Sex Offender is prohibited from entering upon the premises of a Park or any Recreational Facility.

4. A Registered Sex Offender is prohibited, after having received notice from the Marlborough Police Department that he/she is loitering within five hundred (500) feet of a School, a Day Care Center, a Park, any Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded, from continuing to so loiter or from returning thereto. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the Registered Sex Offender to the outer property line of the School, a Day Care Center, a Park, any Recreational Facility, Elderly Housing Facility or Facility for the Mentally Retarded.
5. A Registered Sex Offender is prohibited, after having received notice from the Marlborough Police Department that he/she is loitering within five hundred (500) feet of a School Bus Stop, from continuing to so loiter or from returning thereto, provided, however, that this prohibition shall not apply on days when the schools within the City of Marlborough are not in session.

B. Exceptions.

1. The prohibitions defined in § 162-4.A.1 through § 162-4.A.3 shall not be construed or enforced so as to prohibit a Registered Sex Offender from exercising his or her right to vote in any federal, state or municipal election, or from attending any religious service.
2. The prohibitions defined in § 162-4.A.4 and § 162-4.A.5 do not apply to a Registered Sex Offender's place of residence when such residence is excepted under § 162-3.C.

C. Penalties. Any violation of this section may be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in: (1) a non-criminal fine of \$150.00 for a first violation; and (2) a non-criminal fine of \$300.00 for each additional violation of this section. In lieu of non-criminal disposition, Registered Sex Offenders who commit an additional violation under this section, except for those who are not yet seventeen (17) years of age when they commit any such additional violation, may be subject to immediate arrest under state law. A Registered Sex Offender commits a separate offense for each and every violation of this section.

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§ 162-5 Exemptions

The provisions of this chapter shall not be applicable to Registered Sex Offenders incarcerated in any facilities owned, maintained and/or operated by the City of Marlborough.

§ 162-6 Enforcement

- A. The Marlborough Police Department shall be charged with the enforcement of this chapter.
- B. A written list describing the prohibited areas defined in this ordinance inclusive of School Bus Stops, as well as a map depicting the residency restriction areas and a map depicting the safety zones exclusive of School Bus Stops, shall be created by the City and maintained by the Marlborough Department of Public Works. As to School Bus Stops, the list, and not the map depicting the safety zones, shall govern. The City shall review both the list and the maps no less than annually for changes. The list, the maps and a copy of this ordinance will be available to the public at the Marlborough Police Department and Marlborough City Clerk's office, and on the City of Marlborough's website.

§ 162-7 Severability

If any clause, sentence, paragraph, subdivision, section or other part of this ordinance shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this ordinance, and it shall be construed to have been the legislative intent to enact this ordinance without such unconstitutional or invalid parts therein.

§ 162-8 Effective Date

This ordinance shall become effective immediately upon passage.

Previously passed four stages of Legislation

Yea: 6 – Nay: 5

Yea: Katz, Ferro, Juaire, Towle, Vigeant, Levy

Nay: Schafer, Webster, Clancy, Ossing, Pope

ADOPTED

In City Council

Order No. 06-1001231H

Returned **unsigned**

by Mayor Nancy

Nancy E. Stevens

A TRUE COPY

ATTEST:

Acting City Clerk

MAY 21, 2007

That the City Council APPROVES amending Chapter 147, of the City Code of the City of Marlborough, entitled Non-Criminal Disposition, as amended, by further amending § 147-1(B)(28) as follows:

(28) Registered Sex Offender Restrictions – C. 162.

Residency Restrictions (§ 162-3)

Penalty:

Any violation of this section shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, as follows:

First Offense by Registered Sex Offender as to § 162-3 of c. 162: Non-criminal fine of \$150.00 and notification to offender that he/she has thirty (30) days to move.

Subsequent Offense by Registered Sex Offender as to § 162-3 of c. 162: Non-criminal fine of \$300.00 and notification to offender's parole officer and/or probation officer, and the Commonwealth's Sex Offender Registry Board that the Sex Offender has violated a municipal ordinance.

Safety Zones (§ 162-4)

Penalty:

Any violation of § 162-4 of c. 162 may be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in: (1) a non-criminal fine of \$150.00 for a first violation; (2) a non-criminal fine of \$300.00 for each additional violation of this section. A Registered Sex Offender commits a separate offense for each and every violation of this section.

Enforcing Person: Marlborough Police Department

Previously passed four stages of Legislation

ADOPTED

In City Council

Order No. 06100-1231-1H

Returned **unsigned** by

Mayor Nancy E. Stevens

A TRUE COPY

ATTEST:

Acting City Clerk